S T A T E O F N E W Y O R K

1316

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. COLTON, FIELDS, MAISEL -- Multi-Sponsored by -- M. of A. ALFANO, BRENNAN, COOK, DINOWITZ, GLICK, JACOBS, NOLAN -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to manufacturers responsibility for electronic equipment recovery and recycling; and to amend the state finance law, in relation to establishing the electronic equipment recycling account within the environmental protection fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The purpose of this act shall be to establish a comprehensive electronic equipment recycling system financed by manufacturers of electronic equipment, based on their return share of such electronic equipment. The purpose of this recycling system is to ensure the safe and environmentally sound management of electronic devices and components; encourage the design of electronic devices and components that are less toxic and more recyclable; and to promote the development of a regional infrastructure for collection and recycling of end-of-life electronics.

S 2. Short title. This act shall be known and may be cited as the "manufacturer return share electronic equipment recycling act of 2009".

S 3. Article 27 of the environmental conservation law is amended by adding a new title 29 to read as follows:

TITLE 29

ELECTRONIC EQUIPMENT RECYCLING

SECTION 27-2901. DEFINITIONS.
27-2903. SCOPE OF PRODUCTS.
27-2905. SALES PROHIBITION.
27-2907. LABELING REQUIREMENT.
27-2909. MANUFACTURER RESPONSIBILITY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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27-2911. SAMPLING AND REPORTING.
27-2913. RETAILER RESPONSIBILITY.
27-2915. DEPARTMENT RESPONSIBILITY.
27-2917. FEES FOR THE COLLECTION OR RECYCLING OF COVERED ELECTRONIC DEVICES.
27-2919. CONTRACTS FOR COLLECTION, TRANSPORTATION AND RECYCLING OF COVERED ELECTRONIC DEVICES.
27-2921. ENVIRONMENTALLY SOUND MANAGEMENT REQUIREMENTS.
27-2923. DISPOSAL BAN.
27-2925. ENFORCEMENT.
27-2927. REGULATORY AUTHORITY.
27-2929. DISPOSITION OF FEES AND PENALTIES.
27-2931. FINANCIAL AND PROPRIETARY INFORMATION.
27-2933. FEDERAL PREEMPTION.
27-2935. SEVERABILITY.

S 27-2901. DEFINITIONS.

AS USED IN THIS TITLE:

1. "COVERED ENTITY" MEANS ANY HOUSEHOLD, SCHOOL DISTRICT, NOT-FOR-PROFIT CORPORATION OR SMALL BUSINESS.

2. "COVERED ELECTRONIC DEVICE" (A) MEANS A DESKTOP OR LAPTOP COMPUTER, COMPUTER MONITOR, PORTABLE COMPUTER, CATHODE RAY TUBE OR FLATPANEL BASED TELEVISION WITH A SCREEN SIZE GREATER THAN FOUR INCHES MEASURED DIAGONALLY; AND

(B) SHALL NOT INCLUDE:

(I) A COVERED ELECTRONIC DEVICE THAT IS A PART OF A MOTOR VEHICLE OR ANY COMPONENT PART OF A MOTOR VEHICLE ASSEMBLED BY OR FOR A VEHICLE MANUFACTURER OR FRANCHISED DEALER, INCLUDING REPLACEMENT PARTS FOR USE IN A MOTOR VEHICLE;

(II) A COVERED ELECTRONIC DEVICE THAT IS FUNCTIONALLY OR PHYSICALLY A PART OF A LARGER PIECE OF EQUIPMENT DESIGNED AND INTENDED FOR USE IN AN INDUSTRIAL, COMMERCIAL OR MEDICAL SETTING, INCLUDING DIAGNOSTIC, MONITORING OR CONTROL EQUIPMENT;

(III) A COVERED ELECTRONIC DEVICE THAT IS CONTAINED WITHIN A CLOTHES WASHER, CLOTHES DRYER, REFRIGERATOR, REFRIGERATOR AND FREEZER, MICROWAVE OVEN, CONVENTIONAL OVEN OR RANGE, DISHWASHER, ROOM AIR CONDITIONER, DEHUMIDIFIER OR AIR PURIFIER; OR

(IV) A TELEPHONE OF ANY TYPE, UNLESS IT CONTAINS A VIDEO DISPLAY AREA GREATER THAN FOUR INCHES, MEASURED DIAGONALLY.

3. "HOUSEHOLD" MEANS AN OCCUPANT OF A SINGLE DETACHED DWELLING UNIT OR A SINGLE UNIT OF A MULTIPLE DWELLING UNIT WHO HAS USED A COVERED ELECTRONIC DEVICE AT A DWELLING UNIT PRIMARILY FOR PERSONAL OR HOME BUSINESS USE.

4. "MANUFACTURER" MEANS ANY PERSON WHO, IRRESPECTIVE OF THE SELLING TECHNIQUE USED, INCLUDING BY MEANS OF REMOTE SALE:

(A) MANUFACTURES OR MANUFACTURED COVERED ELECTRONIC DEVICES UNDER ITS OWN BRAND FOR SALE;

(B) MANUFACTURES OR MANUFACTURED COVERED ELECTRONIC DEVICES FOR SALE IN THIS STATE WITHOUT AFFIXING A BRAND;

(C) RESELLS OR RESOLD IN THIS STATE COVERED ELECTRONIC DEVICES PRODUCED BY OTHER SUPPLIERS UNDER ITS OWN BRAND OR LABEL;

(D) IMPORTS OR EXPORTS OR IMPORTED OR EXPORTED COVERED ELECTRONIC DEVICES INTO THE UNITED STATES. HOWEVER, IF A COMPANY FROM WHOM AN IMPORTER PURCHASES THE MERCHANDISE HAS A PRESENCE IN THE UNITED STATES AND/OR ASSETS, THAT COMPANY SHALL BE DEEMED TO BE THE MANUFACTURER; OR

(E) MANUFACTURES OR MANUFACTURED COVERED ELECTRONIC DEVICES, SUPPLIES OR SUPPLIED THEM TO ANY PERSON OR PERSONS WITHIN A DISTRIBUTION NETWORK

THAT INCLUDES WHOLESALERS OR RETAILERS IN THIS STATE, AND BENEFITS OR BENEFITED FROM THE SALE OF THOSE COVERED ELECTRONIC DEVICES THROUGH THAT DISTRIBUTION NETWORK.

5. "MANUFACTURER'S BRANDS" MEANS A MANUFACTURER'S NAME, BRAND NAME OR BRAND LABEL, AND ALL MANUFACTURER'S NAMES, BRAND NAMES AND BRAND LABELS FOR WHICH THE MANUFACTURER HAS LEGAL RESPONSIBILITY, INCLUDING THOSE NAMES, BRAND NAMES, AND BRAND LABELS OF COMPANIES THAT HAVE BEEN ACQUIRED BY THE MANUFACTURER.

6. "NOT-FOR-PROFIT CORPORATION" MEANS A NOT-FOR-PROFIT CORPORATION EXEMPT FROM TAXATION UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE.

7. "ORPHAN DEVICE" MEANS A COVERED ELECTRONIC DEVICE WHOSE MANUFACTURER CANNOT BE IDENTIFIED OR FOR WHICH THE MANUFACTURER IS NO LONGER IN BUSINESS AND HAS NO SUCCESSOR IN INTEREST.

8. "PERSON" MEANS ANY INDIVIDUAL, BUSINESS ENTITY, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, NOT-FOR-PROFIT CORPORATION, ASSOCIATION, GOVERNMENTAL ENTITY, PUBLIC BENEFIT CORPORATION OR PUBLIC AUTHORITY.

9. "PREMIUM SERVICE" MEANS SERVICE SUCH AS AT-LOCATION SYSTEM UPGRADE SERVICES PROVIDED TO COVERED ENTITIES AND AT-HOME PICKUP SERVICES OFFERED TO HOUSEHOLDS. "PREMIUM SERVICE" DOES NOT INCLUDE CURBSIDE SERVICE.

10. "PROGRAM YEAR" MEANS A FULL CALENDAR YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN.

11. "RECYCLING" MEANS TRANSFORMING OR REMANUFACTURING UNWANTED ELECTRONIC PRODUCTS, COMPONENTS, AND BYPRODUCTS INTO USABLE OR MARKETABLE MATERIALS FOR USE OTHER THAN LANDFILL DISPOSAL OR INCINERATION. "RECYCLING" DOES NOT INCLUDE ENERGY RECOVERY OR ENERGY GENERATION BY MEANS OF COMBUSTING UNWANTED ELECTRONIC PRODUCTS, COMPONENTS, AND BYPRODUCTS WITH OR WITHOUT OTHER WASTE. SMELTING OF ELECTRONIC MATERIALS TO RECOVER METALS FOR REUSE IN CONFORMANCE WITH ALL APPLICABLE LAWS AND REGULATIONS IS NOT CONSIDERED DISPOSAL OR ENERGY RECOVERY.

12. "RETAIL SALES" MEANS SALES OF PRODUCTS THROUGH SALES OUTLETS, VIA THE INTERNET, MAIL ORDER OR ANY OTHER MEANS, WHETHER OR NOT THE SELLER HAS A PHYSICAL PRESENCE IN THIS STATE.

13. "RETAILER" MEANS A PERSON WHO OWNS OR OPERATES A BUSINESS THAT SELLS NEW COVERED ELECTRONIC DEVICES INCLUDING SALES OUTLETS, CATALOGS OR THE INTERNET, WHETHER OR NOT THE SELLER HAS A PHYSICAL PRESENCE IN THIS STATE, TO A COVERED ENTITY.

14. "RETURN SHARE" MEANS THE PERCENTAGE OF COVERED ELECTRONIC DEVICES FOR WHICH AN INDIVIDUAL MANUFACTURER IS RESPONSIBLE TO COLLECT, TRANSPORT AND RECYCLE.

15. "RETURN SHARE IN WEIGHT" MEANS THE TOTAL WEIGHT OF COVERED ELECTRONIC DEVICES FOR WHICH A MANUFACTURER IS RESPONSIBLE TO COLLECT, TRANSPORT AND RECYCLE.

16. "SELL" OR "SALE" MEANS ANY TRANSFER FOR CONSIDERATION OF TITLE INCLUDING, BUT NOT LIMITED TO, TRANSACTIONS CONDUCTED THROUGH SALES OUTLETS, CATALOGS OR THE INTERNET, OR ANY OTHER, SIMILAR ELECTRONIC MEANS, AND EXCLUDING LEASES.

17. "SMALL BUSINESS" MEANS A BUSINESS THAT EMPLOYS TEN OR LESS INDIVIDUALS.

S 27-2903. SCOPE OF PRODUCTS.

1. THE PROVISIONS OF THIS TITLE SHALL APPLY TO COVERED ELECTRONIC DEVICES USED BY COVERED ENTITIES IN THIS STATE.

2. THE COMMISSIONER MAY ANNUALLY MAKE RECOMMENDATIONS TO THE LEGISLATURE AND THE GOVERNOR TO EXTEND THE PROVISIONS OF THIS TITLE TO OTHER COVERED ELECTRONIC DEVICES.

S 27-2905. SALES PROHIBITION.

1. NO MANUFACTURER SHALL SELL OR OFFER FOR SALE A COVERED ELECTRONIC DEVICE IN THIS STATE UNLESS THE MANUFACTURER HAS FILED A REGISTRATION WITH THE DEPARTMENT.

2. NO RETAILER SHALL OFFER FOR SALE ANY NEW COVERED ELECTRONIC DEVICE FROM A MANUFACTURER WHO HAS NOT FILED A REGISTRATION WITH THE DEPARTMENT. THE DEPARTMENT SHALL MAINTAIN AND DISSEMINATE A LIST OF EACH MANUFACTURER REGISTERED, AND A LIST OF MANUFACTURER'S BRANDS AS REPORTED IN THE MANUFACTURER'S REGISTRATION. SUCH LIST SHALL BE POSTED ON THE DEPARTMENT WEBSITE AND SHALL BE UPDATED ON A MONTHLY BASIS. EVERY PERSON WHO SELLS OR BRINGS INTO THIS STATE FOR SALE ANY COVERED ELECTRONIC DEVICE, SHALL REVIEW SUCH LIST PRIOR TO SELLING A COVERED ELECTRONIC DEVICE IN THIS STATE. A PERSON IS CONSIDERED TO HAVE COMPLIED WITH THIS SUBDIVISION IF, ON THE DATE A COVERED ELECTRONIC DEVICE WAS ORDERED, THE MANUFACTURER WAS INCLUDED ON THE LIST MAINTAINED BY THE DEPARTMENT ON ITS WEBSITE AS HAVING REGISTERED.

S 27-2907. LABELING REQUIREMENT.

NO MANUFACTURER OR RETAILER SHALL SELL OR OFFER FOR SALE ANY COVERED ELECTRONIC DEVICE IN THIS STATE UNLESS THE COVERED ELECTRONIC DEVICE IS LABELED WITH THE MANUFACTURER'S BRAND, AND SUCH LABEL IS PERMANENTLY AFFIXED AND READILY VISIBLE.

S 27-2909. MANUFACTURER RESPONSIBILITY.

1. BY JANUARY FIRST, TWO THOUSAND TEN, EACH MANUFACTURER OF COVERED ELECTRONIC DEVICES OFFERED FOR SALE IN THIS STATE SHALL REGISTER ANNUALLY WITH THE DEPARTMENT AND PAY A REGISTRATION FEE OF FIVE THOUSAND DOLLARS. THEREAFTER, IF A MANUFACTURER HAS NOT PREVIOUSLY FILED A REGISTRATION, THE MANUFACTURER SHALL FILE A REGISTRATION WITH THE DEPARTMENT PRIOR TO ANY OFFER FOR SALE OF THE MANUFACTURER'S COVERED ELECTRONIC DEVICES IN THE STATE. ANY MANUFACTURER TO WHOM THE DEPARTMENT PROVIDES NOTIFICATION OF A RETURN SHARE AND RETURN SHARE BY WEIGHT PURSUANT TO SUBDIVISION THREE OF SECTION 27-2915 OF THIS TITLE AND WHO HAS NOT PREVIOUSLY FILED A REGISTRATION SHALL FILE A REGISTRATION WITH THE DEPARTMENT WITHIN THIRTY DAYS OF RECEIVING SUCH NOTIFICATION. EACH MANUFACTURER WHO IS REGISTERED SHALL SUBMIT AN ANNUAL RENEWAL OF ITS REGISTRATION TO THE DEPARTMENT BY JANUARY FIRST. THE REGISTRATION AND ALL RENEWALS SHALL INCLUDE A LIST OF THE MANUFACTURER'S BRANDS OF COVERED ELECTRONIC DEVICES, INCLUDING ALL BRANDS SOLD IN THE STATE, ALL BRANDS BEING SOLD IN THE STATE, AND ALL BRANDS FOR WHICH THE MANUFACTURER HAS LEGAL RESPONSIBILITY PURSUANT TO SUBDIVISION THIRTEEN OF THIS SECTION.

2. MANUFACTURERS SHALL BE RESPONSIBLE FOR THE COLLECTION, TRANSPORTATION AND RECYCLING OF THEIR RETURN SHARE IN WEIGHT OF COVERED ELECTRONIC DEVICES, AS DETERMINED BY THE DEPARTMENT.

3. EACH MANUFACTURER OF COVERED ELECTRONIC DEVICES SHALL:

(A) SUBMIT AN ADDITIONAL FEE TO THE DEPARTMENT BASED ON ITS SHARE OF RETURNED COVERED ELECTRONIC DEVICES, WHICH SHALL BE CALCULATED BY MULTIPLYING THE MANUFACTURER'S RETURN SHARE IN WEIGHT OF COLLECTED COVERED ELECTRONIC DEVICES BY FIFTY CENTS PER POUND OR SUCH OTHER COST PER POUND AS DETERMINED BY THE DEPARTMENT PURSUANT TO SECTION 27-2915 OF THIS TITLE; OR

(B) SUBMIT A PLAN FOR THE FIRST PROGRAM YEAR AND ANNUALLY THEREAFTER TO THE DEPARTMENT TO ESTABLISH, FINANCE, CONDUCT AND MANAGE A PROGRAM FOR THE COLLECTION, TRANSPORTATION AND RECYCLING OF ITS RETURN SHARE IN

WEIGHT OF COVERED ELECTRONIC DEVICES, PROVIDED THAT THE PLAN REPRESENTS AT LEAST FIVE PERCENT OF THE TOTAL COVERED ELECTRONIC DEVICES EXPECTED TO BE COLLECTED ANNUALLY IN THE STATE, AND PROVIDED THAT THE PLAN PROVIDES COLLECTION SERVICES FOR COVERED ELECTRONIC DEVICES THAT ARE REASONABLY CONVENIENT AND AVAILABLE TO ALL COVERED ENTITIES OF THE STATE RESIDING WITHIN ITS GEOGRAPHIC BOUNDARIES, INCLUDING BOTH RURAL AND URBAN AREAS.

4. MANUFACTURER COLLECTION SERVICES MAY INCLUDE ELECTRONIC RECYCLERS AND REPAIR SHOPS, RECYCLERS OF OTHER COMMODITIES, REUSE ORGANIZATIONS, NOT-FOR-PROFIT CORPORATIONS, RETAILERS, GOVERNMENT RECYCLING SITES OR ANY OTHER SUITABLE LOCATIONS. THE PLANS MAY CONSIDER WHERE POSSIBLE THE USE OF THE EXISTING COLLECTION AND CONSOLIDATION INFRASTRUCTURES FOR HANDLING COVERED ELECTRONIC DEVICES TO THE EXTENT THAT SUCH INFRASTRUCTURE IS REASONABLY ACCESSIBLE AND COMPLIES WITH THE ENVIRONMENTALLY SOUND MANAGEMENT REQUIREMENTS OF THIS TITLE.

5. MANUFACTURER PLANS MAY ESTABLISH REASONABLE LIMITS ON THE NUMBER OF COVERED ELECTRONIC DEVICES BY PRODUCT TYPE ACCEPTED PER HOUSEHOLD PER DAY OR PER DELIVERY AT A COLLECTION SITE OR SERVICE. FOR PURPOSES OF THIS TITLE AND NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS TITLE, THE COLLECTION OF NOT MORE THAN TEN COVERED ELECTRONIC DEVICES PER DAY FROM ANY PERSON IN ACCORDANCE WITH THE MANUFACTURER'S PLAN SHALL BE DEEMED TO BE THE COLLECTION OF A COVERED ELECTRONIC DEVICE FROM A HOUSEHOLD. ALL HOUSEHOLDS MAY USE A COLLECTION SITE AS LONG AS THE HOUSEHOLDS ADHERE TO ANY RESTRICTIONS ESTABLISHED IN THE PLANS.

6. MANUFACTURER PLANS MAY SPECIFY LOCATIONS WHERE SMALL BUSINESSES, NOT-FOR-PROFIT CORPORATIONS AND SCHOOL DISTRICTS MAY DELIVER COVERED ELECTRONIC DEVICES FOR RECYCLING AT NO CHARGE.

7. A GROUP OF MANUFACTURERS JOINTLY SUBMITTING A PLAN SHALL COLLECT, TRANSPORT AND RECYCLE THE SUM OF THE OBLIGATIONS OF EACH PARTICIPATING MANUFACTURER.

8. EACH PLAN REQUIRED BY THIS SECTION SHALL BE FILED WITH A MANUFACTURER'S ANNUAL REGISTRATION SUBMITTED TO THE DEPARTMENT BY JANUARY FIRST, TWO THOUSAND TEN. A MANUFACTURER WHO SUBMITS ITS INITIAL REGISTRATION TO THE DEPARTMENT AFTER JANUARY FIRST, TWO THOUSAND TEN MUST FULFILL THIS REQUIREMENT WITHIN THIRTY DAYS OF PUBLICATION BY THE DEPARTMENT OF THAT MANUFACTURER'S RETURN SHARE IN WEIGHT. EACH PLAN SHALL INCLUDE:

(A) METHODS THAT WILL BE USED TO COLLECT THE COVERED ELECTRONIC DEVICES INCLUDING THE NAME AND LOCATIONS OF PROPOSED COLLECTION AND CONSOLIDATION POINTS;

(B) THE PROCESSES AND METHODS THAT WILL BE USED TO RECYCLE RECOVERED COVERED ELECTRONIC DEVICES INCLUDING A DESCRIPTION OF THE PROCESSING THAT WILL BE USED AND THE NAME AND LOCATION OF FACILITIES TO BE UTILIZED DIRECTLY BY THE MANUFACTURER;

(C) A COPY OF THE CERTIFICATION SUBMITTED TO THE MANUFACTURER PURSUANT TO SUBDIVISION FIVE OF SECTION 27-2921 OF THIS TITLE BY EACH PROCESSOR DIRECTLY UTILIZED BY THE MANUFACTURER IN ITS PLAN;

(D) MEANS THAT WILL BE UTILIZED TO PUBLICIZE THE COLLECTION OPPORTUNITIES; AND

(E) THE INTENTION OF THE MANUFACTURER TO FULFILL ITS OBLIGATIONS THROUGH OPERATION OF ITS OWN PLAN, EITHER INDIVIDUALLY OR IN PARTNERSHIP WITH OTHER MANUFACTURERS.

9. THE DEPARTMENT SHALL REVIEW EACH PLAN AND WITHIN SIXTY DAYS OF RECEIPT OF SUCH PLAN, SHALL DETERMINE WHETHER THE PLAN COMPLIES WITH THE PROVISIONS OF THIS TITLE. IF THE PLAN IS APPROVED, THE DEPARTMENT SHALL NOTIFY THE MANUFACTURER. IF THE PLAN IS REJECTED, THE DEPARTMENT SHALL

NOTIFY THE MANUFACTURER AND PROVIDE THE REASONS FOR THE PLAN'S REJECTION.

UPON APPROVAL OF A PLAN BY THE DEPARTMENT, THE MANUFACTURER'S PAYMENT OF THE ANNUAL FEE BASED ON RETURN SHARE SHALL BE WAIVED.

10. IF A MANUFACTURER FAILS TO COMPLY WITH ALL THE TERMS AND CONDITIONS OF ITS APPROVED PLAN, IT SHALL BE REQUIRED TO SUBMIT TO THE DEPARTMENT A PAYMENT TO COVER THE COST OF COLLECTING, TRANSPORTING AND RECYCLING THE UNMET PORTION OF ITS OBLIGATION. SUCH PAYMENT SHALL BE EQUAL TO THE QUANTITY OF THE OUTSTANDING PORTION, IN POUNDS, MULTIPLIED BY FIFTY CENTS, OR THE COST PER POUND AS DETERMINED BY THE DEPARTMENT PURSUANT TO SUBDIVISION TEN OF SECTION 27-2915 OF THIS TITLE.

11. MANUFACTURERS THAT COLLECT, TRANSPORT AND RECYCLE IN EXCESS OF THEIR OBLIGATION UNDER THEIR APPROVED PLAN MAY SELL CREDITS TO ANOTHER MANUFACTURER OR APPLY SUCH EXCESS TO THE FOLLOWING CALENDAR YEAR'S RECYCLING OBLIGATION.

12. PRIOR TO JUNE FIRST, TWO THOUSAND TEN AND PERIODICALLY THEREAFTER, THE DEPARTMENT SHALL IDENTIFY, USING ALL REASONABLE MEANS, MANUFACTURERS THAT ARE IN BUSINESS OR THAT ARE NO LONGER IN BUSINESS BUT THAT HAVE A SUCCESSOR IN INTEREST AND BRANDS FOR WHICH A MANUFACTURER IS RESPONSIBLE, BY EXAMINING BEST AVAILABLE RETURN SHARE DATA AND OTHER PERTINENT DATA. UNLESS THE MANUFACTURER HAS REGISTERED WITH THE DEPARTMENT, THE DEPARTMENT SHALL NOTIFY MANUFACTURERS THAT HAVE BEEN IDENTIFIED AND FOR WHOM AN ADDRESS HAS BEEN FOUND OF THE REQUIREMENTS OF THIS TITLE, INCLUDING REGISTRATION AND PLAN REQUIREMENTS UNDER THIS SECTION.

13. ANY PERSON ACQUIRING A MANUFACTURER, OR WHO HAS ACQUIRED A MANUFACTURER SHALL HAVE ALL RESPONSIBILITY FOR THE ACQUIRED COMPANY'S COVERED ELECTRONIC DEVICES, INCLUDING COVERED ELECTRONIC DEVICES MANUFACTURED PRIOR TO THE EFFECTIVE DATE OF THIS TITLE, UNLESS THAT RESPONSIBILITY REMAINS WITH ANOTHER ENTITY PER THE PURCHASE AGREEMENT AND THE ACQUIRING MANUFACTURER PROVIDES THE DEPARTMENT WITH A LETTER FROM THE OTHER ENTITY ACCEPTING RESPONSIBILITY FOR THE COVERED ELECTRONIC DEVICES.

S 27-2911. SAMPLING AND REPORTING.

1. THE DEPARTMENT SHALL BE RESPONSIBLE FOR THE CONDUCT OF AN AUDITABLE, STATISTICALLY SIGNIFICANT SAMPLING OF COVERED ELECTRONIC DEVICES RECOVERED EVERY YEAR, FOR THOSE MANUFACTURERS WHO ELECT NOT TO CONDUCT THEIR OWN COLLECTION, TRANSPORTATION AND RECYCLING PROGRAM. THE SAMPLING INFORMATION COLLECTED SHALL INCLUDE:

(A) A LIST OF THE BRAND NAMES OF COVERED ELECTRONIC DEVICES, INCLUDING ORPHAN DEVICES;

(B) THE NUMBER OF COVERED ELECTRONIC DEVICES, INCLUDING ORPHAN DEVICES;

(C) THE WEIGHT OF COVERED ELECTRONIC DEVICES THAT ARE IDENTIFIED FOR EACH BRAND NAME OR FOR ORPHAN DEVICES;

(D) THE TOTAL WEIGHT OF THE SAMPLE; AND

(E) ANY OTHER ADDITIONAL INFORMATION NEEDED TO ASSIGN RETURN SHARE.

2. THE SAMPLING SHALL BE CONDUCTED IN ACCORDANCE WITH A PROCEDURE ESTABLISHED BY THE DEPARTMENT AND MAY BE CONDUCTED BY A THIRD-PARTY ORGANIZATION INCLUDING THE RECYCLER, TO BE DETERMINED BY THE DEPARTMENT. THE DEPARTMENT MAY, AT ITS DISCRETION BE PRESENT AT THE SAMPLING, AND MAY AUDIT THE METHODOLOGY AND THE RESULTS OF A THIRD-PARTY ORGANIZATION. THE COSTS ASSOCIATED WITH THE SAMPLING SHALL BE RECOVERED FROM THE ELECTRONIC EQUIPMENT RECYCLING ACCOUNT OF THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED BY SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

3. IF A MANUFACTURER CONDUCTS ITS OWN COLLECTION PLAN OF COVERED ELECTRONIC DEVICES, THE MANUFACTURER SHALL ANNUALLY REPORT TO THE DEPARTMENT ON OR BEFORE JANUARY THIRTIETH, BEGINNING THE SECOND PROGRAM YEAR:

(A) THE RESULTS OF AUDITABLE, STATISTICALLY SIGNIFICANT SAMPLING OF THE COVERED ELECTRONIC DEVICES COLLECTED DURING THE PREVIOUS CALENDAR YEAR. THE INFORMATION REPORTED SHALL INCLUDE A LIST OF BRAND NAMES OF THE COVERED ELECTRONIC DEVICES; THE WEIGHT OF COVERED ELECTRONIC DEVICES THAT ARE IDENTIFIED FOR EACH BRAND NAME AND THE WEIGHT OF COVERED ELECTRONIC DEVICES THAT LACK A MANUFACTURER'S BRAND; AND ANY OTHER INFORMATION DETERMINED BY THE DEPARTMENT AS NECESSARY TO ASSIGN A RETURN SHARE; AND

(B) THE TOTAL WEIGHT OF COVERED ELECTRONIC DEVICES COLLECTED, TRANSPORTED AND RECYCLED DURING THE PRECEDING CALENDAR YEAR, INCLUDING DOCUMENTATION VERIFYING COLLECTION AND PROCESSING OF SUCH MATERIAL.

S 27-2913. RETAILER RESPONSIBILITY.

BEGINNING JANUARY FIRST, TWO THOUSAND ELEVEN RETAILERS SHALL PROVIDE TO THEIR CUSTOMERS THE DEPARTMENT'S TOLL-FREE TELEPHONE NUMBER AND WEBSITE. REMOTE SELLERS MAY INCLUDE THIS INFORMATION IN A VISIBLE LOCATION ON THEIR WEBSITE TO FULFILL THIS REQUIREMENT.

S 27-2915. DEPARTMENT RESPONSIBILITY.

1. THE DEPARTMENT SHALL DETERMINE THE RETURN SHARE FOR EACH MANUFACTURER THAT IS IN BUSINESS OR THAT IS NO LONGER IN BUSINESS, BUT HAS A SUCCESSOR IN INTEREST, OF COVERED ELECTRONIC DEVICES BY DIVIDING THE WEIGHT OF COVERED ELECTRONIC DEVICES IDENTIFIED FOR EACH SUCH MANUFACTURER BY THE TOTAL WEIGHT OF COVERED ELECTRONIC DEVICES IDENTIFIED FOR ALL SUCH MANUFACTURERS AND MULTIPLYING THIS QUOTIENT BY ONE HUNDRED. FOR THE FIRST PROGRAM YEAR, THE RETURN SHARE OF COVERED ELECTRONIC DEVICES IDENTIFIED FOR AN INDIVIDUAL MANUFACTURER SHALL BE BASED ON THE BEST AVAILABLE PUBLIC INFORMATION FOR RETURN SHARE DATA FROM OTHER STATES AND OTHER PERTINENT DATA. FOR THE SECOND AND EACH SUBSEQUENT YEAR, THE RETURN SHARE OF COVERED ELECTRONIC DEVICES IDENTIFIED FOR EACH MANUFACTURER SHALL BE BASED ON THE MOST RECENT SAMPLING OF COVERED ELECTRONIC DEVICES CONDUCTED IN THE STATE.

2. THE DEPARTMENT SHALL DETERMINE THE RETURN SHARE IN WEIGHT FOR EACH MANUFACTURER OF COVERED ELECTRONIC DEVICES BY MULTIPLYING THE RETURN SHARE FOR EACH MANUFACTURER BY THE TOTAL WEIGHT IN POUNDS OF COVERED ELECTRONIC DEVICES, INCLUDING ORPHAN DEVICES, COLLECTED FROM COVERED ENTITIES THE PRECEDING YEAR.

FOR THE FIRST PROGRAM YEAR, THE TOTAL RETURN SHARE IN WEIGHT SHALL BE BASED ON THE BEST AVAILABLE PUBLIC INFORMATION AND OTHER PERTINENT DATA ON RETURN SHARE IN WEIGHT, INCLUDING AVAILABLE DATA, IF ANY, ON COVERED ELECTRONIC DEVICES RECYCLED DURING THE PREVIOUS YEAR IN THE STATE.

3. ANNUALLY, ON OR BEFORE FEBRUARY FIFTEENTH, THE DEPARTMENT SHALL PROVIDE EACH MANUFACTURER WITH ITS RETURN SHARE AND THE RETURN SHARE IN WEIGHT OF COVERED ELECTRONIC DEVICES FOR SUCH YEAR.

4. THE DEPARTMENT SHALL RECEIVE ALL FEES IMPOSED PURSUANT TO THIS TITLE. SIXTY DAYS AFTER RECEIVING FROM THE DEPARTMENT PURSUANT TO SUBDIVISION 3 OF THIS SECTION ITS RETURN SHARE IN WEIGHT, MANUFACTURERS WITHOUT APPROVED PLANS SHALL SUBMIT TO THE DEPARTMENT FEES, AS REQUIRED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION 27-2909 OF THIS TITLE.

5. THE DEPARTMENT SHALL PREPARE AND IMPLEMENT ITS PLAN FOR THE COLLECTION, TRANSPORTATION, AND RECYCLING OF COVERED ELECTRONIC DEVICES FOR THOSE MANUFACTURERS WITHOUT APPROVED PLANS.

(A) THE DEPARTMENT SHALL ENSURE THAT THE PLAN PROVIDES COLLECTION SERVICES FOR COVERED ELECTRONIC DEVICES THAT ARE REASONABLY CONVENIENT

AND AVAILABLE TO ALL COVERED ENTITIES IN THE STATE RESIDING WITHIN ITS GEOGRAPHIC BOUNDARIES, INCLUDING BOTH RURAL AND URBAN AREAS. THE PLAN MAY PROVIDE COLLECTION SERVICES JOINTLY WITH ONE OR MORE MANUFACTURERS.

(B) THE DEPARTMENT'S PLAN MAY PROVIDE COLLECTION SERVICES IN FORMS DIFFERENT THAN COLLECTION SITES, IF THOSE ALTERNATE SERVICES PROVIDE EQUAL OR BETTER CONVENIENCE TO HOUSEHOLDS AND EQUAL OR INCREASED RECOVERY OF COVERED ELECTRONIC DEVICES.

(C) FOR RURAL AREAS WITHOUT COMMERCIAL CENTERS OR AREAS WITH WIDELY DISPERSED POPULATIONS, THE DEPARTMENT'S PLAN MAY PROVIDE COLLECTION AT THE NEAREST COMMERCIAL CENTERS OR SOLID WASTE SITES, COLLECTION EVENTS, MAIL-BACK SYSTEMS, OR A COMBINATION OF THESE OPTIONS.

(D) COLLECTION SITES MAY INCLUDE ELECTRONIC RECYCLERS AND REPAIR SHOPS, RECYCLERS OF OTHER COMMODITIES, REUSE ORGANIZATIONS, NOT-FOR-PROFITS, RETAILERS, GOVERNMENT RECYCLING SITES OR ANY OTHER SUITABLE LOCATIONS.

(E) THE DEPARTMENT'S PLAN SHALL ENCOURAGE THE USE OF EXISTING COLLECTION AND CONSOLIDATION INFRASTRUCTURES FOR HANDLING COVERED ELECTRONIC DEVICES TO THE EXTENT THAT SUCH INFRASTRUCTURE IS ACCESSIBLE ON A REGULAR AND ONGOING BASIS, IS COST EFFECTIVE AND COMPLIES WITH THE ENVIRONMENTALLY SOUND MANAGEMENT RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS TITLE.

(F) THE DEPARTMENT'S PLAN SHALL ESTABLISH REASONABLE LIMITS ON THE NUMBER OF COVERED ELECTRONIC DEVICES BY PRODUCT TYPE ACCEPTED PER HOUSEHOLD PER DAY OR PER DELIVERY AT A COLLECTION SITE OR SERVICE. FOR THE PURPOSES OF THIS TITLE AND NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS TITLE, THE COLLECTION OF NOT MORE THAN TEN COVERED ELECTRONIC DEVICES PER DAY FROM ANY PERSON IN ACCORDANCE WITH THE DEPARTMENT'S PLAN SHALL BE DEEMED TO BE THE COLLECTION OF A COVERED ELECTRONIC DEVICE FROM A HOUSEHOLD. ALL HOUSEHOLDS MAY USE A COLLECTION SITE AS LONG AS THE HOUSEHOLDS ADHERE TO ANY RESTRICTIONS ESTABLISHED IN THE PLANS.

(G) SMALL BUSINESSES, NOT-FOR-PROFIT CORPORATIONS AND SCHOOL DISTRICTS MAY DELIVER COVERED ELECTRONIC DEVICES FOR RECYCLING AT NO CHARGE TO SUCH SMALL BUSINESSES, NOT-FOR-PROFIT CORPORATIONS AND SCHOOL DISTRICTS, ONLY TO LOCATIONS SPECIFIED BY THE DEPARTMENT.

6. THE DEPARTMENT SHALL ORGANIZE, CONDUCT AND COORDINATE PUBLIC OUTREACH.

7. THE DEPARTMENT SHALL USE ALL MONEYS APPROPRIATED FROM THE ELECTRONIC EQUIPMENT RECYCLING ACCOUNT FOR THE SOLE PURPOSE OF IMPLEMENTING THE PROVISIONS OF THIS TITLE.

8. BEGINNING IN TWO THOUSAND ELEVEN, THE DEPARTMENT SHALL COMPLETE AN ANNUAL REPORT ON ALL COVERED ELECTRONIC DEVICES COLLECTED, TRANSPORTED, AND RECYCLED PURSUANT TO ITS PLAN ON OR BEFORE JANUARY THIRTIETH. SUCH REPORT SHALL INCLUDE:

(A) A LIST OF ALL PARTIES WHOM THE DEPARTMENT HAS DESIGNATED AS APPROVED TO RECEIVE PAYMENTS, THE AMOUNT OF PAYMENTS IT HAS MADE TO THOSE PARTIES, AND THE PURPOSE OF THOSE PAYMENTS;

(B) THE TOTAL WEIGHT OF COVERED ELECTRONIC DEVICES COLLECTED IN THE STATE THE PREVIOUS CALENDAR YEAR;

(C) A LIST OF ALL COLLECTION SITES OPERATED IN THE STATE AND THE PARTIES WHO OPERATE THEM;

(D) AN EVALUATION OF THE EFFECTIVENESS OF THE EDUCATION AND OUTREACH PROGRAM; AND

(E) AN EVALUATION OF THE EXISTING COLLECTION AND PROCESSING INFRASTRUCTURE.

9. THE DEPARTMENT SHALL, BY JUNE FIRST, TWO THOUSAND TEN, MAINTAIN AND UPDATE AN INTERNET WEBSITE AND A TOLL-FREE TELEPHONE NUMBER WITH A CURRENT LISTING OF WHERE CONSUMERS CAN DEPOSIT COVERED ELECTRONIC DEVICES FOR RECYCLING.

10. BEGINNING JANUARY THIRTIETH, TWO THOUSAND TWELVE, AND ANNUALLY THEREAFTER, THE DEPARTMENT MAY ADJUST THE COST PER POUND FOR RECYCLING COVERED ELECTRONIC DEVICES, WHICH COST PER POUND AMOUNT IS USED TO CALCULATE THE ADDITIONAL FEE THAT MANUFACTURERS MUST PAY TO THE DEPARTMENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION 27-2909 OF THIS TITLE AND THE PAYMENT THAT A MANUFACTURER MUST PAY TO THE DEPARTMENT PURSUANT TO SUBDIVISION TEN OF SECTION 27-2909 OF THIS TITLE, IN ORDER TO REASONABLY APPROXIMATE MARKET COSTS FOR THE COLLECTION, TRANSPORTATION AND RECYCLING OF COVERED ELECTRONIC DEVICES. PRIOR TO MAKING ANY SUCH ADJUSTMENT, THE DEPARTMENT SHALL NOTIFY THE PUBLIC, INCLUDING ALL REGISTERED MANUFACTURERS, OF ANY PROPOSED CHANGE TO THE COST PER POUND AND PROVIDE A PUBLIC COMMENT PERIOD. THE DEPARTMENT SHALL NOTIFY ALL REGISTERED MANUFACTURERS OF ANY CHANGES TO THE COST PER POUND BY NOVEMBER FIRST PRIOR TO THE PROGRAM YEAR FOR WHICH THE REVISED COST PER POUND IS TO BE USED.

S 27-2917. FEES FOR THE COLLECTION OR RECYCLING OF COVERED ELECTRONIC DEVICES.

NO FEE OR CHARGE SHALL BE IMPOSED UPON ANY COVERED ENTITY FOR THE COLLECTION, TRANSPORTATION OR RECYCLING OF COVERED ELECTRONIC DEVICES BY ANY PERSON OR ENTITY PARTICIPATING IN OR BEING COMPENSATED BY THE STATE-WIDE PROGRAM OPERATED AND FUNDED BY THE DEPARTMENT OR BY A MANUFACTURER FOR RECYCLING OR TAKE-BACK OR FOR ANY OTHER PURPOSE RELATED TO THE COLLECTION, TRANSPORTATION OR RECYCLING OF COVERED ELECTRONIC DEVICES. PROVIDED, HOWEVER, THAT THIS SHALL NOT PROHIBIT COLLECTORS PROVIDING PREMIUM SERVICES FROM CHARGING CUSTOMERS A FEE FOR THE ADDITIONAL COLLECTION COST OF PROVIDING SUCH SERVICE, WHEN FUNDING FOR COLLECTION FROM THE STATE-WIDE PROGRAM FUNDED BY THE DEPARTMENT OR A PROGRAM FUNDED BY A MANUFACTURER DOES NOT FULLY COVER THE COST OF SUCH SERVICE.

S 27-2919. CONTRACTS FOR COLLECTION, TRANSPORTATION AND RECYCLING OF COVERED ELECTRONIC DEVICES.

THE COMMISSIONER MAY ENTER INTO CONTRACTS WITH MUNICIPALITIES, NOT-FOR-PROFIT CORPORATIONS, AND FOR-PROFIT ORGANIZATIONS AND COMPANIES FOR THE COLLECTION, TRANSPORTATION AND RECYCLING OF COVERED ELECTRONIC DEVICES. CONTRACTS SHALL INCLUDE PROVISIONS TO ENSURE THE FOLLOWING:

1. THE COVERED ELECTRONIC DEVICES ARE COLLECTED FROM A COVERED ENTITY LOCATED IN THE STATE;

2. THE COLLECTION, TRANSPORTATION AND RECYCLING OF THE COVERED ELECTRONIC DEVICES ARE CONDUCTED IN ACCORDANCE WITH ALL LOCAL, STATE AND FEDERAL LAWS;

3. NO FEES OR COSTS ARE CHARGED TO COVERED ENTITIES; PROVIDED, HOWEVER, THIS SHALL NOT PROHIBIT COLLECTORS PROVIDING PREMIUM SERVICES FROM CHARGING CUSTOMERS A FEE FOR ADDITIONAL COLLECTION COST OF PROVIDING SUCH SERVICE, WHEN FUNDING FOR COLLECTION FROM THE STATE-WIDE PROGRAM FUNDED BY THE DEPARTMENT DOES NOT FULLY COVER THE COST OF SUCH SERVICE; AND

4. RECORDKEEPING TO ACCOUNT FOR ALL COVERED ELECTRONIC DEVICES ACCEPTED AND THE DISPOSITION OF SUCH DEVICES.

S 27-2921. ENVIRONMENTALLY SOUND MANAGEMENT REQUIREMENTS.

1. ALL COVERED ELECTRONIC DEVICES COLLECTED PURSUANT TO THIS TITLE SHALL BE RECYCLED IN A MANNER THAT IS IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS, RULES AND REGULATIONS.

2. THE DEPARTMENT SHALL ESTABLISH BY RULE PERFORMANCE STANDARDS FOR ENVIRONMENTALLY SOUND MANAGEMENT FOR PROCESSORS DIRECTLY USED TO FULFILL THE REQUIREMENTS OF THIS TITLE. PERFORMANCE STANDARDS MAY INCLUDE FINANCIAL ASSURANCE TO ENSURE PROPER CLOSURE OF FACILITIES CONSISTENT WITH ENVIRONMENTAL STANDARDS.

3. THE DEPARTMENT SHALL ESTABLISH BY RULE GUIDELINES REGARDING NONRECYCLED RESIDUAL THAT MAY BE PROPERLY DISPOSED OF AFTER COVERED ELECTRONIC DEVICES HAVE BEEN PROCESSED.

4. THE DEPARTMENT MAY AUDIT PROCESSORS THAT ARE UTILIZED TO FULFILL THE REQUIREMENTS OF A DEPARTMENT PLAN.

5. BY DECEMBER FIFTEENTH, TWO THOUSAND ELEVEN AND ANNUALLY THEREAFTER BY JANUARY FIFTEENTH, EACH RECYCLER USED DIRECTLY BY A MANUFACTURER IN A PLAN SHALL SUBMIT TO THE MANUFACTURER A CERTIFICATION THAT AN AUDIT OF THE RECYCLER HAS BEEN CONDUCTED WITHIN THE PAST TWELVE MONTHS. THE AUDIT MUST ASSESS COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES AND REGULATIONS.

S 27-2923. DISPOSAL BAN.

NO PERSON SHALL KNOWINGLY OR INTENTIONALLY PLACE OR DISPOSE OF ANY COVERED ELECTRONIC DEVICE IN ANY SOLID WASTE DISPOSAL FACILITY.

S 27-2925. ENFORCEMENT.

1. THE DEPARTMENT SHALL ENFORCE THE PROVISIONS OF THIS TITLE PURSUANT TO THE PROVISIONS OF TITLE TWENTY-SEVEN OF ARTICLE SEVENTY-ONE OF THIS CHAPTER.

2. THE VIOLATIONS OF THIS TITLE SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) THE SALE OF ANY COVERED ELECTRONIC DEVICE WHICH DOES NOT COMPLY WITH THE PROVISIONS OF THIS TITLE;

(B) APPLICATION FOR COMPENSATION FOR THE RECYCLING OF ANY COVERED ELECTRONIC DEVICE NOT COLLECTED WITHIN THE STATE;

(C) USE OF A QUALIFIED COLLECTION PROGRAM TO RECYCLE ANY COVERED ELECTRONIC DEVICE NOT DISCARDED WITHIN THE STATE;

(D) THE KNOWING FAILURE TO REPORT OR ACCURATELY REPORT ANY DATA REQUIRED TO BE REPORTED TO THE DEPARTMENT BY THIS TITLE; AND

(E) ANY VIOLATION OF THE REQUIREMENTS OF THIS TITLE.

S 27-2927. REGULATORY AUTHORITY.

THE DEPARTMENT MAY ADOPT SUCH RULES AND REGULATIONS AS SHALL BE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS TITLE.

S 27-2929. DISPOSITION OF FEES AND PENALTIES.

ALL FEES AND PENALTIES COLLECTED PURSUANT TO THE PROVISIONS OF THIS TITLE SHALL BE PAID TO THE COMPTROLLER FOR DEPOSIT TO THE CREDIT OF THE ELECTRONIC EQUIPMENT RECYCLING ACCOUNT OF THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

S 27-2931. FINANCIAL AND PROPRIETARY INFORMATION.

FINANCIAL OR PROPRIETARY INFORMATION SUBMITTED TO THE DEPARTMENT UNDER THIS TITLE IS EXEMPT FROM PUBLIC DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

S 27-2933. FEDERAL PREEMPTION.

THIS TITLE SHALL BE DEEMED REPEALED IF A FEDERAL LAW OR A COMBINATION OF FEDERAL LAWS, TAKES EFFECT THAT ESTABLISHES A NATIONAL PROGRAM FOR THE COLLECTION AND RECYCLING OF COVERED ELECTRONIC DEVICES THAT SUBSTANTIALLY MEETS THE INTENT OF THIS TITLE, INCLUDING THE CREATION OF A FINANCING MECHANISM FOR COLLECTION, TRANSPORTATION, AND RECYCLING OF ALL COVERED ELECTRONIC DEVICES FROM HOUSEHOLDS, SMALL BUSINESSES, SCHOOL DISTRICTS AND NOT-FOR-PROFIT CORPORATIONS IN THE UNITED STATES.

S 27-2935. SEVERABILITY.

THE PROVISIONS OF THIS TITLE SHALL BE SEVERABLE, AND IF ANY PARAGRAPH, SUBDIVISION, SECTION OR PART OF THIS TITLE IS DECLARED TO BE VOID OR INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED, BUT SHALL REMAIN IN FULL FORCE AND EFFECT.

S 4. The environmental conservation law is amended by adding a new section 71-2728 to read as follows:

S 71-2728. ENFORCEMENT OF TITLE 29 OF ARTICLE 27.

1. ANY MANUFACTURER WHO VIOLATES ANY REQUIREMENT OF SUBDIVISION ONE OR THREE OF SECTION 27-2909 OF THIS CHAPTER MUST FIRST RECEIVE A WRITTEN WARNING FROM THE DEPARTMENT INCLUDING A COPY OF THE REQUIREMENTS AND THIRTY DAYS TO CORRECT THE VIOLATION. AFTER THIRTY DAYS, SUCH MANUFACTURER MAY BE ASSESSED A PENALTY OF UP TO TEN THOUSAND DOLLARS FOR THE FIRST VIOLATION AND UP TO TWENTY-FIVE THOUSAND DOLLARS FOR THE SECOND AND EACH SUBSEQUENT VIOLATION, IN ADDITION TO BEING RESPONSIBLE FOR ANY PAYMENTS REQUIRED IN THIS ARTICLE.

2. EXCEPT AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION, ANY PERSON WHO VIOLATES ANY REQUIREMENT OF TITLE TWENTY-NINE OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER MUST FIRST RECEIVE A WRITTEN WARNING FROM THE DEPARTMENT INCLUDING A COPY OF THE REQUIREMENTS UNDER TITLE TWENTY-NINE OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER AND THIRTY DAYS TO CORRECT THE VIOLATION. AFTER THIRTY DAYS, SUCH PERSON MAY BE ASSESSED A PENALTY OF UP TO ONE THOUSAND DOLLARS FOR THE FIRST VIOLATION AND UP TO TWO THOUSAND DOLLARS FOR THE SECOND AND SUBSEQUENT VIOLATIONS.

S 5. Subdivision 2 of section 92-s of the state finance law, as added by chapter 610 of the laws of 1993, is amended to read as follows:

2. a. The comptroller shall establish the following separate and distinct accounts within the environmental protection fund:

(i) solid waste account;

(ii) parks, recreation and historic preservation account;

(iii) open space account; [and]

(iv) environmental protection transfer account[.]; AND

(V) ELECTRONIC EQUIPMENT RECYCLING ACCOUNT.

b. All monies received by the comptroller for deposit in the environmental protection fund, EXCEPT THOSE MONIES COLLECTED FROM FEES AND PENALTIES IMPOSED PURSUANT TO TITLE TWENTY-NINE OF ARTICLE TWENTY-SEVEN OF THE ENVIRONMENTAL CONSERVATION LAW, shall be deposited first to the credit of the environmental protection transfer account. ALL MONIES RECEIVED BY THE COMPTROLLER FOR DEPOSIT IN THE ENVIRONMENTAL PROTECTION FUND FROM FEES AND PENALTIES COLLECTED PURSUANT TO TITLE TWENTY-NINE OF ARTICLE TWENTY-SEVEN OF THE ENVIRONMENTAL CONSERVATION LAW SHALL BE DEPOSITED TO THE CREDIT OF THE ELECTRONIC EQUIPMENT RECYCLING ACCOUNT. No monies shall be expended from any such account for any project except pursuant to appropriation by the legislature.

S 6. Subdivision 3 of section 92-s of the state finance law, as amended by chapter 145 of the laws of 2004, is amended to read as follows:

3. Such fund shall consist of the amount of revenue collected within the state from the amount of revenue, interest and penalties deposited pursuant to section fourteen hundred twenty-one of the tax law, THE AMOUNT OF FEES AND PENALTIES RECEIVED PURSUANT TO TITLE TWENTY-NINE OF ARTICLE TWENTY-SEVEN OF THE ENVIRONMENTAL CONSERVATION LAW, the amount of fees and penalties received from easements or leases pursuant to subdivision fourteen of section seventy-five of the public lands law and the money received as annual service charges pursuant to section four hundred four-l of the vehicle and traffic law, all moneys required to be deposited therein from the contingency reserve fund pursuant to section

two hundred ninety-four of chapter fifty-seven of the laws of nineteen hundred ninety-three, all moneys required to be deposited pursuant to section thirteen of chapter six hundred ten of the laws of nineteen hundred ninety-three, repayments of loans made pursuant to section 54-0511 of the environmental conservation law, all moneys to be deposited from the Northville settlement pursuant to section one hundred twenty-four of chapter three hundred nine of the laws of nineteen hundred ninety-six, provided however, that such moneys shall only be used for the cost of the purchase of private lands in the core area of the central Suffolk pine barrens pursuant to a consent order with the Northville industries signed on October thirteenth, nineteen hundred ninety-four and the related resource restoration and replacement plan, the amount of penalties required to be deposited therein by section 71-2724 of the environmental conservation law, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. All such revenue shall be initially deposited into the environmental protection fund, for application as provided in subdivision [five] SIX of this section.

S 7. Subdivision 6 of section 92-s of the state finance law is amended by adding a new paragraph (f) to read as follows:

(F) MONEYS FROM THE ELECTRONIC EQUIPMENT RECYCLING ACCOUNT SHALL BE MADE AVAILABLE, PURSUANT TO APPROPRIATION, TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO BE USED SOLELY FOR THE PURPOSES OF IMPLEMENTING AND ENFORCING THE PROVISIONS OF TITLE TWENTY-NINE OF ARTICLE TWENTY-SEVEN OF THE ENVIRONMENTAL CONSERVATION LAW.

S 8. This act shall take effect January 1, 2010 except that:

(a) section 27-2923 of the environmental conservation law, as added by section three of this act, shall take effect January 1, 2011;

(b) the department of environmental conservation is immediately authorized to develop any rules and regulations necessary to implement the provisions of this act; and

(c) the department of environmental conservation shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section 27-2933 of the environmental conservation law, as added by section three of this act, in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.